SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NO. 166

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION,

APPELLANTS

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

APPENDIX TO BRIEF OF APPELLANTS.

APPENDIX

The purpose of filing this appendix is to place before the court conveniently and logically all the facts necessary to an understanding of the issues on this appeal. This is done because as appellants believe and have repeatedly urged both before the trial court and in this court that much that is unnecessary is in the record. References are made to pages of the printed record so that our statement of facts can easily be tested to see whether or not sufficient of the record is embodied in this Appendix.

The Investigation Out of Which Grew the Order Complained Of

The Alabama rates complained of were after hearing prescribed by the Alabama Public Service Commission July 25, 1924 (R. 443). The order of the Commission instituting the investigation is dated October 7, 1924 (see 113 I. C. C. 392, R. 36, 37, 105), but this order (copied in full in the record, pp. 105, 106) while probably suggested by the complaints of carriers, was begun on the motion of the Commission itself. The Commission in its opinion described its order (R. 36, 37, 113 I. C. C. 392) and, after referring to evidence of general dissatisfaction with the fertilizer rates and stating that the investigation was "upon our own motion", described the proceeding as a general investigation:

> ". . . into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, . . . with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises."

Testimony was later taken. This testimony reduced to narrative form is in the record. Much the greater part, however, thereof dealt with rates other than these wholly within the State of Alabama, and Appellants presented as a compliance with Equity Rule 75 a narrative of what their counsel believe is all relevant testimony. This narrative follows:

NARRATIVE OF ALL TESTIMONY RELATING TO THE ISSUES IN THE CASE AT BAR

I. Uniform Single and Joint-Line Scale Advocated

The carriers advocate a single and joint-line scale of rates for uniform application on fertilizer and fertilizer material throughout southern territory. The territory embraced in the proposed adjustment of the carriers included all points on and east or south of the Mississippi and Ohio Rivers, Virginia cities and points south thereof, subject to a few exceptions (R. 248).

The proposals of the carriers were based on the Royster scale prescribed by the Interstate Commerce Commission in *Royster Guano Company v. Atlantic Coast Line R. R. Co.*, 50 I. C. C. 34. The joint-line scale proposed was generally 34 cents higher than the single-line scale (R. 251-253).

No change in the basis of making less-than-carload rates on fertilizer, i. e., 120 per cent of the carload rates, was proposed by the carriers (R. 254).

II. History of Rates on Fertilizer Between Points in the State of Alabama

The present scale of rates on fertilizer applicable between points in the State of Alabama became effective on July 25, 1924, pursuant to the order of the Alabama Commission. Prior to that time, and extending back for a period of some-

thing like 17 years, the rates on this commodity were made by the use of the mileage scale of rates commonly referred to as the Alabama Statutory Scale. By statute approved November 23, 1907, the Alabama Legislature fixed the same mileage scale of rates on fertilizer carload and less carload between points in that State, as were then in effect between points in the State of Georgia on carload and less carload traffic. This action by the Alabama Legislature was taken without any prior investigation and without any hearing in respect to the reasonableness either of the rates then existing, or of the rates fixed by this statute, and resulted in substantial reductions in the rates previously in effect. These rates remained in force until they were superseded by the order of the Alabama Commission entered on July 25, 1924, except as they were changed by General Order 28, Ex Parte 74, and the general reduction of 1922. During the latter part of 1921 the Alabama Public Service Commission cited the carriers operating in that State to show cause why that commission should not establish a just and reasonable scale of freight rates on all commodities moving between points within the State of Alabama. In response to that citation, the carriers submitted to the Alabama commission a mileage scale for application on fertilizer between points within the State of Alabama, which scale was substantially the scale prescribed by the Interstate Commerce Commission in the Third Royster Scale, 50 I. C. C. 35, advanced under General Order 28 and Ex Parte 74 and modified so as to make the rates end in even figures. The Alabama Public Service Commission prescribed a scale of rates for application over the standard lines which were materially lower than the rates proposed by the carriers and lower than the rates that were prescribed by the Interstate Commerce Commission in the Third Royster Scale case; somewhat higher rates were prescribed over and in connection with the weaker roads (R. 442-451).

The scale of rates prescribed by the Alabama Commission is considerably lower than the scales prescribed by the Interstate Commerce Commission in the *Blackshear Case*, 87 I. C. C. 654, for application from Blackshear, Georgia, to points in Florida. They are also lower than the scale of rates on the same commodities prescribed by the commission in the *Memphis-Southwestern Case*, 77 I. C. C. 473 (R. 445-447).

The scale of rates which the Alabama Commission prescribed and which became effective on July 25, 1924, is not materially higher than the rates that were in force before the carriers received authority in Ex Parte 74 to make a general increase in their freight rate structure; there are a few mileage blocks as to which the present rates are the same as, or less than, the rates in effect prior to this revision (R. 448).

The effect of the new scale of rates prescribed by the Alabama Commission is to deny the carriers the full measure of the general increase granted in 1920 over a scale of rates which the Alabama authorities had prescribed for application within that State. For each and every block of distances the Alabama Commission's scale is less than either the scale prescribed by the Interstate Commerce Commission in *Memphis-Southwestern Case*, 77 I. C. C. 473, or in the *Meridian Rate Case*, I. & S. Docket No. 1372, 66 I. C. C. 179 (R. 448).

Exhibit No. 164 was introduced by the carriers for the purpose of comparing the local scale of rates on fertilizer to various southeastern lines with the single-line scale prescribed by the Alabama Commission, also the Third Royster Scale, and shows that the scale of rates prescribed by the Alabama Commission is considerably below the level of other scales which measure in quite a large degree the rates which those lines apply on fertilizer in the territory in which the scales apply (R. 450).

Exhibit No. 165 contains a comparison of the specifically published interstate rates on fertilizer from manufacturing points in the State of Alabama for single-line application up to 200 miles from the manufacturing point with the rates on the basis of the Alabama Commission's scale and on the basis of the Third Royster Scale. The exhibit shows that the Alabama Commission went very much below the level of the interstate rates in fixing the scale for application within that State (R. 450). An analysis of Exhibit No. 166 shows that out of a total of 2,355 rates, the Alabama scale is less than the interstate rates shown on this exhibit in 2,145 instances, is higher in 182 instances, and is the same in 28 instances; an analysis also shows that the substitution of the Third Royster Scale for the present interstate rates from the manufacturing points to the destinations shown on Exhibit No. 166 will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no changes in the present rate (R. 450, 451).

Witness Sheppard introduced Exhibit No. 135 showing in detail the Mississippi intrastate rates on fertilizer for single-line hauls. These rates for the stronger lines up to 200 miles are as follows:

In Cents Per Ton of 2,000 *Pounds*

Miles	I.C. R.R.	Y. & M.V. Ry.	A. & V. Ry.	N.O. & N.E. R.R.	FRISCO Ry.	M. & O. R. R.
5	90	90	100	100	90	90
10	100	102	100	100	100	100
15	100	102	100	100	100	100
20	100	102	100	100	100	100
25	100	102	120	100	100	100
30	100	102	130	100	100	100
35	100	102	130	100	100	100
40	100	102	140	100	100	100
45	100	102	140	100	100	100
50	100	102	140	100	100	100
55	100	102	140	100	100	100
60	100	102	140	100	100	100
65	100	102	140	100	100	100
70	100	102	140	100	100	100
75	120	113	140	120	120	120
80	120	113	140	120	120	120
85	130	124	140	130	130	130
90	130	124	140	130	130	130
95	140	147	140	140	140	140
100	140	147	140	140	140	140
110	160	158	140	160	160	160
120	170	169	140	170	170	170
130	180	180	140	180	180	180
140	210	203	140	210	....	210
150	210	214	140	220	....	220
160	230	225	....	230	....	230
170	230	237	....	....	....	230
180	260	248	....	....	....	230
190	270	248	....	....	....	230
200	280	259	....	....	....	230

The witness also explained that joint-haul rates in Mississippi were made by combining the local rates and making a deduction therefrom. The rates arrived at in this manner, however, are published as specific rates (R. 372 *seq.*).

III. Evidence As to Discrimination of Alabama Intrastate Rates Against Interstate Rates

The carriers introduced a series of exhibits through witness L. L. Drescher dealing with the question of discrimination of the Alabama state rates against interstate rates, as covered by he allegations in the thirteenth section petition (R. 441 *seq.*).

As the first of this series of exhibits dealing with the question of discrimination of state against interstate traffic, resulting from the application of the recently prescribed scale of rates in Alabama, the witness introduced his Exhibit No. 168, which is a map showing the geographical outlines of the State of Alabama, and also the lines of railroad between certain fertilizer manufacturing points in Alabama and fertilizer manufacturing points in adjacent States. The names of the railroads running between the several manufacturing points are shown on the exhibit. The Southern Railway runs between Decatur, Ala., and Chattanooga, Tenn., also between Decatur, Ala., and Corinth, Miss.; the Louisville & Nashville Railroad Company runs between Decatur, Ala., and Nashville, Tenn.; the St. Louis-San Francisco Railway Company runs between Birmingham, Ala., and Tupelo, Miss.; the Southern Railway Company runs between Birmingham, Ala., and Rome, Ga.; the Alabama Great Southern Railway runs between Birmingham, Ala., and Meridian, Miss.; the Central of Georgia Railway Company runs between Birmingham, Ala., and Columbus, Ga.; the Western Railway of Alabama and the Atlanta & West Point Railroad Company runs between Montgomery, Ala., and Newnan, Ga.; the Seaboard Air Line Railway Company runs between Montgomery, Ala., and Richland, Ga.; the Central of Georgia Railway Company runs between Montgomery, Ala., and Eufaula, Ala.; the Seaboard Air Line Railway Company and Central of Georgia Railway Company form a line between Montgomery, Ala.,

and Columbus, Ga., as do the Western Railway of Alabama and the Central of Georgia Railway Company; the Louisville & Nashville Railroad Company forms a line between Montgomery, Ala., and Mobile, Ala. The above points outside the State of Alabama were chosen because the witness understood that there is a fertilizer movement to each of said points and the territory between these points and the Alabama cities may, in his opinion, be considered as a natural and logical marketing territory for those factories.

Exhibit No. 169 shows the present adjustment of rates from Birmingham to agency stations on the line of the Louisville & Nashville Railroad between Birmingham, Ala., and Nashville, Tenn., in comparison with the rates for equidistant hauls from Nashville in the reverse direction to agency stations intermediate to Birmingham. The rates from Birmingham to stations on this part of the Louisville & Nashville Railroad are very much less than the rates for corresponding distances from Nashville, Tenn. As an illustration: The rate from Birmingham to Athens, Ala., for 98 miles, is $1.95; from Nashville to an equidistant station in Alabama, Elkmont, the rate is $2.59. From Birmingham to Elkmont, 107 miles, the rate is $2.05; from Nashville to Athens, for the same distance, the rate is $2.59. Athens and Elkmont represent about the midway points. The exhibit shows that insofar as the rates are concerned, Nashville is at a considerable disadvantage as compared with Birmingham in making shipments to points in Alabama. However, a comparison between the Alabama intrastate scale and the L. & N. Railroad's interstate scale for longer distances would have shown the opposite result (R. 821). The other illustrations on the exhibit are to the same effect. There have been carload shipments this season from Birmingham to the following stations in Alabama shown on Exhibit No. 169, to-wit: Trafford, Hayden, Blount Springs, Garden City, Hanceville, Cullman, Falkville, Hartselle, Decatur, Athens, and Elkmont. The witness

did not find out whether there were any movements from Nashville, as it appeared to him that there was not much probability of a movement from Nashville to those points in Alabama in view of the difference in the freight rates. Attached as a part of Exhibit No. 169 is a chart showing the relative rate levels as between Birmingham and Nashville to the territory between these two points, the rate level from Birmingham being much lower than the rates for corresponding distances from Nashville, Tenn.

Exhibit No. 170 (469) shows the present rates from Decatur, Ala., versus Chattanooga, Tenn., to agency stations on the Southern Railway in Alabama between those two points. This exhibit shows that Decatur is now able to ship into these Alabama points at rates very much less than from Chattanooga to equidistant points on the same line of railroad. To illustrate: the rate from Decatur to Scottsboro, for 66 miles, is $1.65, as against a rate of $2.10 for the same distance from Chattanooga, Tenn., to Lim Rock, Ala. A chart accompanying this exhibit shows the lower level of rates from Decatur, Ala., all of which are intrastate, as compared with the rates from Chattanooga, Tenn., from which the haul to each of these stations is interstate. The midway point would be one about 41 miles; Gurley, Ala., from Decatur, and Cedar Grove from Chattanooga. The rate from Decatur to Gurley, Ala., is $1.40 and from Chattanooga to Cedar Grove it is $1.80, or a difference of 40 cents a ton in favor of the intrastate shipper.

Exhibit No. 171 deals with the situation from Birmingham, Ala., versus Rome, Ga., to intermediate stations on the Southern Railway. The exhibit shows that the rates from Birmingham to stations in Alabama are somewhat less than the rates for corresponding hauls from Rome, Ga., to stations in Georgia, and when the state line from Georgia into Alabama is crossed the rates from Rome become materially

higher than for an equidistant haul from Birmingham to stations in Alabama. For instance, the rate from Birmingham to Cook Springs, Ala., is $1.25 for 27 miles; while from Rome to Langdon, Ala., 27 miles, the rate is $1.69. From Birmingham to Anniston, the midway point in this stretch of territory, the rate is $1.60 for 63 miles; while from Rome to Anniston, for the same distance, the rate is $2.16, or 56 cents more than from Birmingham. From Birmingham to Piedmont, Ala., the rate is $1.85 for 88 miles; while from Rome to Seddon, Ala., for the same distance, the rate is $2.34. The rates make an abrupt jump at the State lines, both from Birmingham and from Rome. From Birmingham the rate to the last station in Alabama is $2.03; while to the first station over the line, just one mile further, the rate is 47 cents a ton higher. From Rome, Ga., the jump at the state line is 45 cents for a difference in distance of only one mile, the two points being Fearing, Ga., and Tecumseh, Ala. A chart accompanying the exhibit showing graphically that intrastate rates from Birmingham are very much lower than interstate rates from Rome.

The witness stated that while he had not qualified as a transportation man, he was familiar in a general way with the transportation conditions on the line of the Louisville & Nashville Railroad and also upon the various lines covered by his exhibits and that he knew of no transportation condition existing that would warrant this abrupt break in the rates at the State lines; that he would account for such breaks by the actions of the Alabama and the Georgia State Commissions in making lower rates between points within those states.

Exhibit No. 172 shows the rate situation as between Birmingham, Ala., and Columbus, Ga., to agency stations on the Central of Georgia Railway between these two cities. Columbus, Ga., is just over the State line and there are no agency stations in Georgia intermediate to the Georgia-Alabama

State line. All the rates shown on the exhibit from Columbus are interstate rates, whereas the rates from Birmingham are intrastate. The exhibit shows that Birmingham can ship fertilizer at a rate of $1.25 to a point 29 miles away from Birmingham (Sterretts), while the rate from Columbus to Opelika, Ala., also 29 miles distant, is $1.69, or 44 cents higher than the intrastate rate from Birmingham. Putting that another way, the $1.25 rate will carry Birmingham 30 miles out on the Central of Georgia Railway, whereas, the $1.24 rate will carry Columbus shippers but 15 miles. Birmingham can ship to Childersburg, Ala., 43 miles away, at a rate of $1.40, while the rate for that distance from Columbus to Waverly, Ala., is $1.92. Further illustration from the exhibit using a midway point follows: Alexander City, Ala., is 82 miles from Birmingham and the rate is $1.80; the same point is 75 miles from Columbus, Ga., and the rate is $2.37. Here Birmingham has an advantage of $0.57 a ton for a 7-mile additional haul. A chart accompanying the exhibit indicates the relative rate levels from the two points to stations on the Central of Georgia Railway and shows that the Alabama intrastate rates are very much less than the interstate rates from Columbus.

Exhibit No. 173 shows the rate situation from Birmingham, Ala., to Atlanta, Ga., to stations on the Southern Railway between these two fertilizer manufacturing points. The exhibit shows that the Alabama manufacturing point has a decided advantage over the Georgia point in making shipments of fertilizer to points in Alabama. As an illustration: To Edwardsville, a midway point, Birmingham has a rate of $1.85, while to Columbus, Atlanta has a rate of $2.37.

Exhibit No. 174 shows the rate situation from Montgomery, Ala., as compared with Richland, Ga., to stations on the Seaboard Air Line Railway between those two points. The Alabama intrastate scale applies between these two points. The Alabama intrastate scale applies from Montgomery to

stations on the Seaboard Air Line in Alabama and the intrastate rates are very much less than the rates now in effect from Richland, Ga., for equidistant hauls to points in Alabama. The rates make an abrupt jump at the state line similar to the jump described in the rates from Columbus, Ga.

The Central of Georgia Railway has a line running between Montgomery, Ala., and Columbus, Ga., and Exhibit 175 shows the rate adjustment from Montgomery to stations on that line as compared with the rate adjustment from Columbus to equidistant stations in the reverse direction. The exhibit shows that the intrastate rates are very much less than the interstate rates applicable from Columbus. The relative adjustments from the two points are shown by a graphic. As an illustration: The rate from Montgomery to Peachburg is $1.45 for a distance of 47 miles; from Columbus, Ga., to Peachburg, Ala., the rate is $2.14 for 49 miles, a difference in the rate of 69 cents for a difference in distance of two miles.

Exhibit No. 176 deals with the western portion of the State of Alabama and shows the rate adjustment from Decatur, Ala., versus Corinth, Miss., to intermediate agency stations on the Southern Railway Company. This exhibit, like the previous ones, shows that Decatur has materially lower rates to Alabama points than obtain from Corinth, Miss., for like hauls to points in Alabama. As an illustration: From Decatur to Sheffield, Ala., a distance of 45 miles, the rate is $1.40; while from Corinth to Sheffield, 53 miles, the rate is $2.10. The rates take an abrupt jump at the state line which is accounted for by the low rates in Mississippi from Corinth to destinations in Mississippi. There is a jump of 78 cents a ton in the rate for a difference in distance of 3 miles.

Exhibit No. 177 shows that the rates from Birmingham, Ala., to stations on the St. Louis-San Francisco Railway in Alabama are considerably less than the rates which apply for

corresponding distances in the reverse direction, from Tupelo, Miss., to points in Alabama on the same road. As an illustration: The rate to Carbon Hill, Ala., from Birmingham is $1.55 for 60 miles as compared with a rate of $2.10 from Tupelo to Guin, Ala., for the same distance.

Exhibit No. 178 shows the adjustment prevailing from Mobile, Ala., and Pensacola, Fla., to stations on the Louisville & Nashville Railroad as far north as Montgomery. Pensacola is located on the Pensacola Division of the Louisville & Nashville Railroad, which connects with the main line at Flomaton, Ala. It is 16 miles nearer Flomaton and destinations north of Flomaton than is Mobile, but the rates to very many of these stations from Mobile are now lower than from Pensacola. Prior to the effective date of the Alabama Commission's order in the *Fertilizer Case*, July 25, 1924, to part of this line as far north as, but not including, Greenville, Ala., 134 miles from Mobile and 118 miles from Pensacola, the rates from the two points were the same. To stations Greenville and north the rates from Mobile were higher than from Pensacola. The recently prescribed scale of the Alabama Commission has changed this situation and has given to Mobile a decided advantage to a greater portion in this territory, notwithstanding the fact that the distance favors Pensacola.

Exhibit No. 179 shows that the rates from Decatur, Ala., to stations on the main line of the Louisville & Nashville Railroad in Alabama are less than the rates on fertilizer from Decatur to stations on the main line of the Louisville & Nashville Railroad north of Decatur in Tennessee and Kentucky. As an illustration: The rate from Decatur to Cullman, Ala., a point 32 miles south of Decatur, is $1.30; while to Prospect, Tenn., 30 miles north of Decatur, the rate is $1.69. The exhibit shows the advantage in the way of freight rates that parties at these stations in Alabama have over those in Kentucky and Tennessee in purchasing fertilizer from Decatur.

The witness stated he thought that in all probability the parties located on the Louisville & Nashville contiguous to Decatur would be disposed to buy fertilizer at Decatur, particularly if they stood the freight rates.

Exhibit No. 180 deals with the rate adjustment as between Eufaula, Ala., and Columbus, Ga., to stations on the Central of Georgia Railway in Alabama. Eufaula is located on the Alabama side of the Chattahoochee River, while Columbus is on the Georgia side of the same stream. The Central of Georgia Railway has a direct line running from Montgomery to Eufaula. From Columbus it has a line running to Union Springs, Ala., at which point connection is made with the line extending from Montgomery to Eufaula. The exhibit shows the present rates on fertilizer from Alabama points as compared with rates on like traffic from the Georgia points to Montgomery and intermediate agency stations on the Central of Georgia Railway and shows that Eufaula enjoys a very much lower rate than does Columbus. For example: The rate from Eufaula to Cedar Plains, Ala., is $1.30 for 35 miles, while from Columbus, Ga., to Hurtsboro, Ala., for the same distance, the rate is $1.80. This exhibit covers points between Columbus and Montgomery on the one hand and between Montgomery and Eufaula on the other hand, but does not cover points from Columbus to stations on the Central of Georgia Railway west of Union Springs and in the direction of Eufaula.

The witness Drescher testified that the scale of rates prescribed in July, 1924, by the Alabama Commission does not apply from Birmingham to stations on the Alabama Great Southern Railway between Birmingham and Meridian and that the disparities as between state and interstate rates shown in his exhibits do not exist in the rates from Birmingham, Ala., versus Meridian, Miss., to stations on the Alabama Great Southern Railway between these points; that such rates are more nearly in line one with the other due to the order of

the Interstate Commerce Commission in the *Meridian Case;* that if it was not proper to have an intrastate adjustment from Birmingham to these Alabama points materially lower than from Meridian to the same points, there are no conditions that will justify the present disparity in favor of the intrastate rates from Alabama manufacturing points as compared with the interstate rates from points outside of Alabama as represented in his exhibits (R. 462):

Mr. Drescher (R. 475) said:

> "It is a fact that the Alabama scale beyond 220 miles is generally higher than our so-called normal scale. There are instances, of course, in which your scale is less than our local scale. Our normal scale carries carload minimum weight of 15 tons; the Alabama scale carries carload minimum weight of 20 tons, except some few items."

And at R. 476 he said:

> "I would have found some of the Alabama rates to be higher than a good many of the maximum rates, yes."

He also testified on cross-examination that he had overlooked the fact that the Illinois Central Railroad had been accorded the short-line rates which were higher than the interstates rates on that road (R. 477).

Exhibit No. 181 shows the present rates on fertilizer from Birmingham, Ala., and Meridian, Miss., to points on the Alabama Great Southern Railroad between those cities, and the rates for corresponding distances on basis of the Third Royster Scale. The present rates are, on the whole, slightly lower than the rates shown in the Third Royster Scale.

The witness Drescher testified that an inconsistent and anomalous situation existed in the present adjustment of rates on fertilizer in Alabama in connection with the rates from Montgomery to certain stations on the Mobile & Ohio Rail-

road and from Birmingham to stations on the Alabama Great Southern Railroad located in so-called Meridian territory; that the Alabama scale is not applied from Montgomery to stations on the Mobile & Ohio Railroad west of Tuscaloosa, or from Birmingham, Ala., to various stations on the Alabama Great Southern Railroad west of Tuscaloosa because of the order of the Interstate Commerce Commission in the *Meridian Case*; that the Louisville & Nashville Railroad was not a party to the proceeding and since the order issued in connection therewith did not run against that line, there appears to be no prohibition running against the application of the joint-line scale of rates prescribed by the Alabama Commission in making rates on fertilizer from Montgomery or Birmingham to these stations on the Mobile & Ohio and Alabama Great Southern Railroads; that the rates which have direct application from Montgomery over the Mobile & Ohio Railroad and from Birmingham over the Alabama Great Southern Railroad to stations on those lines west of Tuscaloosa are higher than the joint-line scale prescribed by the Alabama Commission applicable over the Louisville & Nashville Railroad in connection with the Mobile & Ohio Railroad or the Alabama Great Southern Railroad via Tuscaloosa.

Witness Drescher admitted on cross-examination that he had not given consideration to rates on cottonseed products (meal and hulls) which are included in the fertilizer list in making his comparisons of Alabama rates with interstate rates.

Exhibits 291 to 303, inclusive, show carload movements of fertilizer from some of the Alabama shipping points and from some of the interstate shipping points to destinations in Alabama covered by Exhibits 169 to 181. The purpose of Exhibits 291 to 303, inclusive, was to show the advantage that the Alabama manufacturing points have under the rate adjustment over the interstate shipping points to destinations in Alabama.

The Alabama, Florida & Gulf is a short line railroad leading from Alabama to Florida. The rate from Dothan, Ala., to the last station on its line in Alabama is $1.71 per ton, while the rate from Dothan to the first station on its line in Florida is $2.37 per ton; the difference in the rate is 66 cents per ton for a difference in distance of 2 miles. The Alabama farmer is paying the same price for fertilizer as is paid by the Florida farmer.

Exhibits 360-384, inclusive (R. 700), show a comparison of the present interstate rates from points in Georgia, South Carolina, North Carolina, Florida, Tennessee, Mississippi, and Alabama to interstate destinations with the intrastate scale prescribed by the State Commissions in adjacent states; the exhibits show that the prevailing level of interstate rates is materially higher than are the intrastate scales.

A. D. Strobhar, president of the Southern Fertilizer and Chemical Company, testified that his company had not suffered in any way from any discrimination on account of the Alabama State rates and that his company does not do business in Alabama (R. 948 *seq.*).

IV. Reasonableness of Rates Prescribed in Third Royster Case

The witness Drescher introduced a number of exhibits for the purpose of proving that the Royster scale prescribed in 50 I. C. C. 34 and brought up to date under the several general increases and the general reduction in 1922 is a fair and reasonable basis for application throughout the South.

V. Rates Over Short Lines in Alabama

Mr. John A. Streyer, traffic manager of the American Short Line Railway Association, introduced a number of exhibits which demonstrate that with one or two exceptions the rates applicable over short lines, both joint and single hauls, are higher than the Third Royster Scale; the exhibits show

the exceedingly low level of the present rates in Alabama and Georgia so far as the rates for single-line hauls are concerned (R. 582).

Witness Streyer further testified that a questionnaire sent to the various short lines in the South developed that between 85 and 95 per cent of the fertilizer traffic was joint traffic, that 20 to 25 per cent of such traffic is interstate and the remainder intrastate (R. 586). He testified that in Alabama fertilizer is one of the leading commodities handled by the short line railroads; that at the present time the rates on fertilizer on interstate joint hauls from and to points on short line railroads are as a rule made upon combination basis; that the intrastate rates are made on combinations less percentages varying in the different states, with the exception of the State of Alabama in which there is a joint-line scale; that generally speaking the single-line rates applicable over the short lines are higher than the Royster Scale, which latter scale is entirely too low for application over the short lines; that Georgia and Alabama are the only two states, generally speaking, in which the single-line scale is less than the Royster Scale (R. 584).

Exhibit 285 shows that for 65 of the important short lines in the South the rate of return was 1.525 per cent standard return on the investment and that the net income of these railroads shows a loss of 2.404 per cent.

Witness Alldredge testified that some of the short lines in Alabama handle comparatively little fertilizer and that the chief problem of such lines is holding their traffic against automobile and truck competition (R. 845).

VI. Certain Interstate Scales of Rates Are Lower Than the Alabama Scale

Mr. J. H. Alldredge, head of the Transportation Department of the Alabama Public Service Commission, introduced an exhibit showing that the standard line scale in Alabama is higher than the interstate scale of the Illinois Central Railroad which runs into Alabama, and stated that the Alabama Commission has for years treated the Illinois Central Railroad as a short line and allowed it to charge even higher rates than the standard lines.

Sheet No. 13 of Exhibit No. 472 compares the present rates on imported fertilizer materials from Gulf and South Atlantic ports to various important southeastern destinations with the rates that would be produced by the rigid application to the Alabama scale. Numerous increases would be made if the Alabama scale were applied rigidly (R. 824). Sheet No. 7 of Exhibit 472 shows that the Alabama scale averaged as high as the standard interstate scales on fertilizer of the Illinois Central, Mobile & Ohio and Louisville & Nashville Railroads (1234).

Exhibit No. 474 shows that the Alabama scale if applied in the Mississippi Valley would increase the level of the existing rates in Mississippi and practically bring the level up to what the carriers originally proposed in I. & S. 1303 as a common level of rates for the Southeast (R. 825).

Sheet No. 18 of Exhibit 472 shows a comparison of certain interstate rates around and across the border of Alabama and back into Alabama with the Alabama scale for the short line distances; the carriers discovered these discrepancies and same have been corrected by increasing the intrestate rates to the Alabama scale. The Alabama scale did not reduce all of the rates (R. 824).

VII. In and Outbound Rates

Exhibits No. 324 and 325 were introduced and shows the existing transportation costs in the assembly of raw materials and in the distribution of the finished product for 100 miles, of the average mixture known as 10-3-3, consisting of the average typical ingredients. The Exhibit shows that on the average, taking a higher and a lower transportation cost at plants, that an average in the neighborhood of $5.00 will represent something like the general average inbound and outbound transportation cost in the South in the making and distribution of a 10-3-3 mixture (R. 660, 661).

The preponderance of the outbound movement from the fertilizer plants in Alabama is for short hauls, while the preponderance of the inbound movement on the materials is for the long hauls (R. 827).

Domestic freight rates on all inbound materials are at issue except upon rock and acid.

The carriers proposed to follow out a port equalization plan in making import rates on fertilizer materials by using the scale from the nearest port, equalizing that rate from competitive ports for longer distances, making a less charge from such further distant ports than the scale itself would provide (R. 283-285).

VIII. Fertilizer Revenue Tonnage, Etc.

Exhibits were introduced to indicate the fertilizer tonnage carried and the percentage of fertilizer revenue of total revenue. The total revenue derived from fertilizer carried by Class I roads in the Southern District is equal to 1.3 per cent of the total revenue derived from all freight carried in this district as compared to .3 per cent for the Eastern District and .1 per cent for the Western District (R. 883).

Exhibits were introduced to show by districts the total fertilizer tonnage originated and carried by Class 1 roads during the years 1920 through 1923. During each of these years the Southern District originated more fertilizer tonnage than either of the other districts and the Southern District carried more fertilizer than either of the other districts, except during 1921 and 1922; for the latter two years the fertilizer carried in the Southern District was practically five times the amount carried by the Western District and was practically equal to that carried by the Eastern District (R. 837).

An exhibit was introduced to show the comparison between the total revenue and revenue per ton on fertilizer, and total revenue and revenue per ton on all commodities. The average revenue per ton on fertilizer, admittedly a low grade commodity, is approximately the same in the Southern District as the average revenue per ton on all commodities, including high-grade commodities, in this district, while in the Eastern and Western Districts the average revenue on fertilizer is much lower than on all commodities. The average revenue per ton on fertilizer in the Southern District is 99.135 per cent of the average revenue per ton on all commodities on comparison with 90.189 per cent in the Eastern District and 74.916 per cent in the Western District (R. 835, 836).

An exhibit showed that the average ton haul of inbound fertilizer in Alabama during 1923 was only 5.8 miles shorter than the average ton haul of all commodities in the entire Southern District, while the average weight per car of fertilizer inbound was heavier in Alabama in 1923 by 7.84 tons than fertilizer originated on Class 1 roads in the entire Southern District; the outbound movement in Alabama during 1923 showed a heavier average weight per car than the average weight per car on fertilizer originating in the entire Southern District by 4.13 tons (R. 835 *seq.*).

An exhibit showed a comparison of the interstate and intrastate movement of fertilizer to and from the plants located in Alabama to the total railroad movement inbound and outbound of strictly fertilizer and fertilizer materials in the Southeast, only 20.78 per cent moves interstate and of the outbound movement only 8.36 per cent moves interstate; of the movement inbound and outbound of all fertilizer and fertilizer ingredients, regardless of tariff classification and point of origin, only 47.95 per cent moves interstate (R. 837).

IX. Average Loading of Fertilizer Per Car

The average loading of fertilizer per car in the Southeast is 23.7 tons; the average loading of fertilizer per car in Alabama is approximately 29.6 tons (R. 822).

X. Fertilizer Companies Not Interested in Rates But in Relationship

The fertilizer industry has no interest in the transportation costs in the aggregate excepting so far as the interests of the consumers are of moment to the industry. Irrespective of the form and terms of sale, the total transportation cost of raw materials and distribution of finished products are expressed in the ultimate consumer prices. So far as concerns the manufacturers of fertilizers, their direct interest in the transportation rates is that there shall be uniformity and that as clearly as possible there shall be an adjustment of inequalities now existing. So far as concerns the total transportation cost, the interest of the industry is the same as that of the consumer, namely: to assist in a just discrimination of such reasonable transportation costs as will assign fertilizer to such rating as recognizes its peculiar position as an agricultural necessity. The primary interest of the fertilizer interests in this proceeding is to get equality (R. 652, 653).

XI. Price of Fertilizer Fixed by Coast Points

The manufacturers of fertilizer located at the ports are in a position to, and in fact do, fix the prices on fertilizer for the neighboring interior areas. The market prices of fertilizer are made based on the coast manufacturing points. When fertilizer is purchased at a coastal producing point, the purchase is made on the basis f. o. b. shipping point, the purchaser paying the transportation rate from such point to destination. Factories located in the interior are compelled to meet the competitive prices fixed by the port communities (R. 652, 653).

At almost any country station in Alabama during this year the price of 10-2-2 fertilizer delivered at the station from any fertilizer company was practically the same (R. 655).

There are fertilizer factories situated along the Gulf Coast and the South Atlantic and North Atlantic Coasts that have a natural advantage in assembling their raw materials from the interior factories. If a scale is graded in such a way that an artificial preference is given to the long-haul shipper located back in the interior, the long-haul shipper can combine that advantage with his natural advantage and play havoc with the interior man. This fact deserves very important consideration in the grading of the scale. The Alabama Commission in prescribing its scale endeavored to avoid such an artificial preference (R. 819).

XII. Competition in Sale of Fertilizers

Fertilizer factories are scattered all over the Southeastern territory and are individually competing in common territory in the sale of fertilizer and if a scale breaks too abruptly the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale and use it against its competitors.

The fertilizer factories are scattered around so that in almost every spot in the Southeast there is competition between two or more factories (R. 818). The International Agricultural Corporation maintains plants located throughout the Southeastern States. It operates 24 plants and has a 50 per cent interest in about as many more joint corporations (R. 657). The American Agricultural Chemical Company engages in manufacture and distribution of fertilizer throughout the entire South; it operates about 35 plants, a good many of which are in the South (R. 711). The F. S. Royster Guano Company operates extensively throughout the South; it maintains about 14 plants in the South (R. 726).

XIII. Wagon Deliveries of Fertilizer in Alabama

One witness testified that from the mixing plants, as distinguished from the manufacturing plants, located throughout the States of Georgia and Alabama, probably as much as 50 per cent of their entire product of completed fertilizer moves out by wagon (R. 672, 819, 827).

Witness Alldredge testified that fertilizer moves out to the farmers at a season of the year when they are not busy with their crops and when they can very easily haul the fertilizer for some distance with their wagons at a relatively low cost, and that unless the rates for the short hauls are kept within bounds, the wagon competition becomes quite severe. Investigations made by the Alabama Public Service Commission show that about 15 per cent of the fertilizer distributed to the farmers is now hauled by wagons and that even under the Alabama scale there is considerable wagon and truck competition (R. 819). In an investigation of the truck competition in Alabama under the revised Alabama scales, it was found that one fertilizer factory had employed a truck and contracted with that truck to deliver fertilizer from its factory at a lower charge than the Alabama scale produced for

the short hauls and that quite a volume of its product was distributed by that fertilizer company in that manner (R. 819).

Exhibit 476 compared the percentages of railroad movement interstate and intrastate from certain fertilizer plants located in Alabama to the total railroad movement and to the total distribution of fertilizer by such plants, including their wagon, boat and other deliveries. During 1923 the wagon deliveries amounted to 15.57 per cent of the total distribution, while the boat and other deliveries were 9.56 per cent, leaving only 68.41 per cent for intrastate railroad movement and 6.46 per cent for interstate movement (R. 837).

Witness Cooper, in Exhibit 476, containing 10 sheets, further showed the earnings of carriers by districts in the United States for part of the year 1920 and for the full years of 1921, 1922 and 1923. In summary sheet 10, this exhibit shows the following as the average percentage of return:

	1920 (4 mos.)	1921	1922	1923
Eastern District	0.97 (Dr)	3.80	5.09	6.89
Southern District	0.84	3.28	5.27	5.88
Western District	1.38	3.69	4.16	4.64

(R. 842.)

The examiner, who functions similarly to a master, proposed a report which we contend is irrelevant (R. 1035). If this Court should hold that this proposed report is evidence, it will be found on pages 925 to 1006 of the printed record. The examiner sums up his findings (R. 1005, 1006). This summary, if admissible testimony, in so far as it relates to Alabama's rates is:

Summary of proposed findings:

1. Fertilizer and fertilizer materials found to be entitled to relatively low rates because of their importance to agriculture, and because of the direct and indirect tonnage accruing to the carriers through their use.

2. Reasonable single and joint-line rates on fertilizer and fertilizer materials prescribed for application between all points in the Southeast, as described in Appendix A. Certain groupings authorized from the Ohio River.

3. An arbitrary of 50 cents a ton prescribed when the transportation is in connection with so-called short and weak lines, such arbitrary to accrue to these carriers. Rates in connection with the Norfolk Southern made 10 per cent higher than the distance scale, but in no case to exceed 50 cents a ton, this excess to accrue to the Norfolk Southern.

* * * * * * * * * *

5. The intrastate rates in Alabama found to unjustly discriminate against interstate commerce, and to unduly prejudice interstate shippers and localities.

Exceptions were filed to this report by the Alabama Public Service Commission and these exceptions, over Appellants' objection, were made part of this record (R. 1023-1028, for objection R. 1035).

These, omitting argument (R. 1023), are:

EXCEPTIONS.

I.

Exception is taken to the measure of the proposed scale insofar as it exceeds the scale proposed by the representatives of the public.

II.

Exception is taken to the graduation of the proposed scale between 500 and 600 miles, inclusive.

III.

Exception is taken to the basis of rates proposed in the report for short lines.

IV.

Exception is taken to the proposed minimum carload weight on cottonseed hulls.

V.

Exception is taken to the proposed finding with respect to intrastate rates in the State of Alabama.

FINDING AND CONCLUSION OF INTERSTATE COMMERCE COMMISSION.

On July 19, 1926, the Interstate Commerce Commission announced its conclusions in an extensive report. This report is in the record, pages 33 to 123, and is reported in Vol. 113 of the Commission's reports, beginning at page 389. Only a small part of this report has any relation to the issues here. The parts that are relevant are:

The order of investigation is quoted (R. 36, 37).

Discussing the industry generally and its relative importance to the carriers, (R. 38, 39) the Commission said:

> "Fertilizer tonnage is also of relatively greater importance to the southern carriers than to the lines in other sections. In 1923 such tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with 0.35 per cent in the eastern district and 0.18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second and the Seaboard Air Line third. In the ratio of fertilizer to total freight, the Central of Georgia ranks first, its fertilizer tonnage being 6.61 per cent of the total, with the Atlantic Coast Line second and the Norfolk Southern third. These ton-

nage figures do not include such materials as potash, acid phosphate, and nitrate of soda, which, for purposes of our statistical returns, are included in commodity Group 66, chemicals and explosives. If these were included, the fertilizer tonnage figures would be appreciably increased. The total revenue of Class 1 roads in the southern district for 1923 from such tonnage was $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the eastern district the revenue from fertilizer tonnage was but 0.3 per cent of the total. The revenue of the Atlantic Coast Line from this source was 4.7 per cent of its total freight revenue in 1924, and that of the Southern for the first seven months of 1924 was 3.63 per cent of its total for the same period.

"It is beyond debate that agriculture in the South can not be conducted successfully without the use of fertilizer, and agriculture has been and probably still is the basic industry of that section."

Traffic intrastate is (R. 43, 44):

"About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory, and the intrastate rates in the several states are shown of record."

Density of this particular traffic and average hauls discussed (R. 71) by the Commission (R. 69, 70):

"It is shown that of the total tonnage of fertilizer and materials, amounting to 3,189,819 tons, 70 per cent moved for distances of 150 miles and less. Of the single-line traffic, one-half moved for distances of 85 miles and less, and one-half of the joint-line traffic moved less than 140 miles. These figures bear out testimony of record. Thus it was testified that the average haul of fertilizers from the important manufacturing points in southern territory ranged from 40 miles from Hartsville, S. C., to 181 miles from Charleston, S. C. It is agreed that the average haul of materials substantially exceeds that of fertilizer. For example, it was shown that from 13 plants located at 10 points in Alabama the average outbound haul was 51 miles, while materials moved inbound

to the same plants an average distance of 355 miles. The inbound hauls, of course, vary considerably, depending on the location of the plant with respect to the principal source of its raw materials.

"The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic.

"The foregoing data do not take into consideration Florida traffic, either intrastate or interstate."

Extent of increase or decrease that would result from proposals of shippers:

"The carriers estimate roughly that the shippers' scale would result in a reduction in their revenues of not less than $636,146, or $1,272,000 on an annual basis. On brief, counsel for Alabama, although admitting that some revenue reduction would be likely to occur under the shippers' scale, question the carriers' estimate. They point to the fact that the estimate includes $147,000 yearly loss to the Norfolk Southern. This carrier, it will be recalled, is asking for special treatment. It appears that 61 per cent of the total tonnage delivered by the Norfolk Southern during the test period consisted of North Carolina intrastate shipments, on which rates somewhat higher than the Royster scale now obtain. The Alabama Commission does not oppose special treatment for this carrier, and on the assumption that it will be accorded concludes that the estimated reduction in revenue would not take place, or at least would be nominal, thus substantially diminishing the gross estimated reduction under the shippers' scale."

The carload minimum to be prescribed is discussed (R. 75, 79):

"The shippers lay stress upon the increase in carload minimum which they proposed from 15 tons to 20 tons. They note the incongruity that such an increase

should be favored, in general, by the shippers and opposed by the carriers. In Alabama, where the higher minimum has been put to the test, the record indicates that it has substantially increased average car loadings, to the carriers' advantage in economy and efficiency of operation. This has also been the effect of similar increases in the past."

The Commission found (R. 78):

"It may be that such a change in the level of fertilizer rates, up or down, as could reasonably be considered would in itself have comparatively *slight effect upon the financial status of the southern* farmer. But that does not alter the fact that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible."

Findings as to general parity of rates and as to joint and single line hauls stated (R. 79, 80):

"Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level.

"Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles."

How conclusions were reached and what rates were prescribed stated by the Commission (R. 81, 82, 84):

"Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted.

"We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below, subject to the minimum carload weights found reasonable below; provided, however, that in applying such rates to the longer hauls the respondent carriers may, for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups."

Here follows a table of rates, and the Commission says:

"We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 5 cents per net ton, subject to the minimum carload weights found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines."

Exception to general adjustment is provided for and import rates are discussed (R. 86-88).

Intrastate rates are discussed (R. 91 *seq.*):

"*The Intrastate Cases*

"We come now to a consideration of the petitions of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against interstate traffic, in violation of *Sections 3 and 13* of the interstate commerce act, by reason of the intrastate rates maintained in Alabama, Georgia, and South Carolina. The carriers' evidence was directed almost entirely to a comparison of the interstate rates from manufacturing points outside the respective States with the intrastate rates from plants within those States, the destinations selected being generally located on lines operating between such manufacturing points.

"Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

FROM	TO	Distance	Present Rates	Royster Scale	Scale Herein Prescribed
		Miles	Cents	Cents	Cents
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	200
Birmingham, Ala.	do	75	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do	60	155	203	180
Nashville, Tenn.	Elkmont, Ala.	98	259	259	225
Birmingham, Ala.	do	107	205	259	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do	49	145	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	216	203	185
Birmingham, Ala.	do	63	160	203	185
Atlanta, Ga.	Heflin, Ala.	85	259	237	210
Birmingham, Ala.	do	82	180	237	210

"In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

"The Alabama Commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing *Wisconsin R. R. Commission v. C., B. & Q. R. R. Co.*, 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate

rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

Then follows (R. 84-101) a discussion of the rates in Georgia and South Carolina. Concluding the discussion, the Commission (R. 101, 102) makes these findings:

"That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.

* * * * * * * * *

"No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

The order following this report of July 19, 1926, was limited to interstate rates and it is not necessary to copy it here.

On October 3, 1927 (R. 24, 25) the first order here claimed to be unauthorized was entered.

After reciting the order of July 19, 1926, stating that the rates hereunder had been made effective although the carriers

> ". . . continue to publish for application to similar traffic within the State of Alabama rates which are upon a substantially lower basis."

All weak line carriers, but none of the short lines, are there named as being subject to the orders of the Commission and as to such carriers the order says:

> "It is ordered, That the common carriers by steam railroad, parties to this proceeding . . . according as they respectively participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practicing the undue prejudice, undue preference and advantages and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama.
>
> "It is further ordered, That the said carriers, according as they respectively participate in the transportion, be, and they are hereby, notified and required to establish, on or before January 3, 1928, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the interstate commerce act, and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less, for corresponding distances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently

amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States."

The original bill of complaint in this case was filed December 21, 1927 (R. 17). This bill is shown in the record, pages 1 to 17.

On December 22, 1927 (R. 224-225) a supplemental order was entered by the Commission, the material part of which is,

> "It is ordered, That the order entered herein on October 3, 1927, be, and the same is hereby amended by adding to the carriers named in the third paragraph of said order the following named carriers."

Following this quotation are given the names of nineteen railroads called short or weak lines. None of these were named in the order of October 3, 1927.

Thereafter, and on January 26, 1928, an amended bill of complaint was filed (R. 219-224).

All defendants were served but some of the short lines did not answer; all, however, appeared in the hearings, stipulations, and orders relating to the appeal (R. 1029, 1033, 1035, 1037, 1045).

The order denying the application for interlocutory injunction dated February 14, 1928 (R. 236), recites the fact of a hearing, states briefly the issues, said (R. 237, 238):

> ". . . . the Court having fully considered the application and being of the opinion that the plantiffs were accorded a full and fair hearing before the Interstate Commerce Commission upon all the issues determined by the Interstate Commerce Commission in its reports and in the orders complained of herein; and the Court being of the opinion that all the findings of the Interstate Commerce Commission, contained in its said reports and

orders, were within the issues presented by the pleadings, including the finding that the rates on fertilizers and fertilizer materials, fixed by the plaintiff, the Alabama Public Service Commission, by its order of May 26th, 1924, effective July 25th, 1924, between points in the State of Alabama, unjustly discriminated against interstate commerce in said traffic between points in southern territory under the interstate rates fixed by the Interstate Commerce Commission said proceedings before it as reasonable and made effective by the orders herein complained of; and the Court being of the opinion that the record of the proceedings before the Interstate Commerce Commission shows that the finding of the Interstate Commerce Commission that the said rates between points in the State of Alabama fixed by the plaintiff, the Alabama Public Service Commission, as above stated, unduly and unreasonably discriminate against interstate commerce in its entirety, under the interstate rates fixed by the Interstate Commerce Commission, as aforesaid, for fertilizers and fertilizer materials between points in southern territory and operate as an undue and unreasonable preference in favor of such intrastate commerce between points within the State of Alabama as against such traffic in interstate commerce between points in southern territory under the rates as fixed by the Interstate Commerce Commission for such traffic in said proceedings before it, and constitute an unreasonable discrimination against interstate commerce, as a whole, was supported by substantial evidence; and that the finding of the Interstate Commerce Commission that one schedule of rates for such traffic, whether moving over a single line of railroad, or a number of lines jointly, was advisable, was, as shown by the record of said proceedings before the Interstate Commerce Commission, supported by substantial evidence and so was within the competency and discretion of the Interstate Commerce Commission to adopt.

"It is ordered, adjudged and decreed that the application of the plaintiffs for the issuance of an interlocutory injunction, as prayed for in their Bill of Complain, as amended, be, and it is hereby denied.

"Given this 13th day of February, 1928.

"R. W. Walker, Circuit Judge. Rufus E. Foster, Circuit Judge. W. I. Grubb, District, Judge."

The petition for appeal was filed and granted March 8, 1928 (R. 228, 229). The assignment of errors filed with the petition for appeal is set out in the record, pages 241 to 244.

Appellants (R. 1031) having seasonably filed and served with their notice of appeal a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and the defendants and intervenor denying that such condensed narrative contains all of the testimony and evidence that is or may be necessary or material for the determination of the appeal and having in writing seasonably filed objections thereto; and the defendants and intervenor having prepared and seasonably presented and served a statement or narrative (in three sections) of all of the oral testimony of the witnesses; and now for the purpose of reducing and settling the record of appeal pursuant to Equity Rule No. 75, the parties by their respective counsel (and with the approval of the Court) stipulate.

After the record came to this Court Appellants made a further effort to shorten the record, filing on May 31, 1928, a Designation of Parts of Record To Be Printed (R. 1038). In this designation (R. 1040) Appellants state:

> "No issue is made in this case with reference to the validity of the order in so far as it prescribes rates applicable to interstate transportation nor in so far as it prescribes rates intrastate in states other than Alabama, the sole issue relating to the order in so far only as it affects transportation within the State of Alabama. Therefore, that part of the narrative of the testimony which relates to interstate rates and to intrastate rates in states other than Alabama is not material and need not

be printed. Counsel for the appellees, with the approval of the court, required the inclusion in the transcript of all testimony before the Interstate Commerce Commission and as to much of which appellants do not deem that it is necessary to be printed."

Appellees not agreeing that the record specified by Appellants was sufficient, designated for printing all the record other than certain exhibits.

Applicable Alabama Statutes Taken From the Code of Alabama of 1923.

Section 9622, the last sentence reads:

"It shall be the duty of the commission to institute or direct the institution of any and all proceedings or suits necessary for the correction and punishment of all violations of the law, or any of the rules or regulations of the commission which shall come to their knowledge without waiting for complaint thereof by a citizen."

Section 9629, the last sentence reads:

"And the commission shall enforce and require compliance with all the provisions of all laws now in force or hereafter enacted regulating railroads and other transportation companies or prescribing the duties thereof."

All actions and proceedings shall be prosecuted by and in the name of Alabama Public Service Commission. Section 9630.

Section 9632 reads as follows:

"9632. *Duties of Commission.*—The Alabama Public Service Commission is charged with the duty of supervising, regulating, and controlling such persons, firms and corporations doing business as aforesaid in this state in all matters relating to their rates and charges and of correcting abuses therein by such persons, firms or corporations. And the Commission shall, from time to time, prescribe and enforce against such persons, firms or cor-

porations such rates and charges as may be reasonable and just, and shall require such persons, firms, or corporations to establish and maintain such rates and charges as may be reasonable and just, which said rates and charges the commission may, from time to time, alter or amend; but where the rates or charges have been fixed or prescribed by statute, the commission shall not have the power to increase such rates or charges."

The Commission is given power by Section 9634 to regulate railroad freight and passenger rates.

The Attorney General represents the Commisison and may employ special counsel. Section 9672.